

Rule 7001 - 1

Contested Matters & Adversary Proceedings - Infants and Incompetent Persons

In contested matters and adversary proceedings, infants and incompetent persons shall be represented by a duly appointed general guardian, conservator, next friend, guardian ad litem or other like fiduciary. A certified copy of the order appointing such representative shall be filed prior to any action in the matter being taken on behalf of the infant or incompetent person.

Related Provisions

FRBP 7017 Parties Plaintiff and Defendant

LBR 7001 - 1
May 1, 1996

Rule 7003-1

Commencement of Adversary Proceeding

(a) Adversary Proceeding Cover Sheet

Every Adversary Proceeding not electronically filed shall be accompanied by an Adversary Proceeding Cover Sheet .(B104).

(b) Summons

A form summons need only be prepared by Plaintiff for issuance by the Clerk if specifically requested by the Clerk.

Related Provisions

B-104 Director's Procedural Form Adversary Proceeding Cover Sheet

B-250 Director's Procedural Form Summons

FRBP 7004 Process, Service of Summons, Complaint

LBR 7003-1

JUNE 1, 2007

Rule 7016 - 1

Pretrial Procedures

(a) Applicability

This rule applies to the pretrial procedure in all adversary proceedings and those contested matters specifically identified by the judge assigned the case.

(b) Scheduling Conference

A scheduling conference shall be set by the Court. The scheduling conference is conducted for the purpose of addressing matters contemplated by FRCP 16(b).

(1) Written Report

The attorney for the plaintiff shall timely call a meeting as required by FRCP 26(f). In accordance with that rule, but in no event no less than five (5) days prior to the date set for the scheduling conference, the attorneys of record and all unrepresented parties shall deliver to the appropriate chambers a written report as contemplated by FRCP 26(f). Should the parties be unable to agree on a written report, then each party shall prepare and submit a separate written report.

(2) In addition to the items set out in FRCP 16(b), the written report shall also contain information or estimates regarding:

- (A) the length of the trial, and**
- (B) preference as to location of the trial.**

(c) Pretrial Conference

A pretrial conference may be set by the Court for the purpose of addressing items contemplated by FRCP 16(c) or other items of interest.

(1) Proposed Pretrial Order

- (A) The attorney for the plaintiff shall insure that the attorneys of record and all unrepresented parties confer prior to the date of the pretrial conference and in good faith attempt to formulate a pretrial order. Should the parties be unable to agree on a pretrial order, then each party shall serve and submit to the Court a separate proposed pretrial order.**

- (B) All proposed pretrial orders shall be delivered to the appropriate chambers no less than five (5) days prior to the date set for the pretrial conference and shall be in the prescribed local format.

Related Provisions

FRBP 7016	Pretrial Procedure
FRBP 7026	Disclosure and Discovery

LBR 7016 - 1
May 15, 2006

Rule 7024 - 2

Unconstitutionality, Claim of

Upon the commencement of any adversary proceeding or contested matter in which the constitutionality of any federal or state statute is brought into question and in which the United States or the state, respectively, or any agency, officer, or employee thereof is not a party, the party raising the constitutional issue shall file a copy of a notice giving the title of the case, a reference to the questioned statute, and the respects in which the party asserts the statute is unconstitutional. The party shall forthwith serve notice on the United States Attorney or the State Attorney General, as appropriate, and shall file a certification that the notice has been so served.

Related Provisions

28 USC 2403 Claim of Unconstitutionality

LBR 7024 - 2
May 1, 1996

Rule 7026 - 1

Discovery - General

(a) Form of Motions to Compel

Motions to compel disclosure or answers to interrogatories or questions, or to determine the sufficiency of disclosure or answers and all objections to requests for admissions shall identify and quote in full each interrogatory or question and the answer, if any, or the admission sought to be obtained. Motions for production and motions for protective orders must set forth, without reference to other pleadings or documents, the objects sought to be produced or protected.

(b) Obligation to Confer

A motion to compel disclosure, discovery or for a protective order shall not be heard unless the parties have conferred and attempted to resolve their differences. The moving parties shall call for such a conference within five (5) days after the motion has been served, and the conference shall be held within five (5) days thereafter. At least five (5) days before the date of the hearing, the parties shall file a statement setting forth the matters on which they have been unable to agree, together with memoranda in support of or in opposition to the motion.

(c) Time for Compliance

The party against whom an order to compel has been entered shall comply with the order within ten (10) days after receiving notice of the order, unless the order specifies a different period.

(d) Filing of Discovery Documents

Disclosure or discovery documents, including depositions, interrogatories, and answers thereto, shall not be filed. Those portions of disclosure or discovery necessary to the disposition of motions, applications or requests shall be appended to the pleadings. The initiating party shall have the responsibility for maintaining discovery material and making it available as may be required during the proceedings.

Related Provisions

FRBP 7026

Compelling Discovery

LBR 7026 - 1

May 1, 1996

Rule 7041 - 1

Dismissal of Adversary Proceedings

A complaint objecting to the granting or for the revocation of discharge shall not be voluntarily dismissed at any party's instance without notice and hearing to the trustee, United States Trustee and the Master Mailing List (MML) pursuant to LBR 2002-1.

Related Provisions

FRBP 7041	Dismissal of Adversary Proceedings
FRBP 4004	Grant or Denial of Discharge
FRBP 4005	Burden of Proof of Objecting to Discharge
FRBP 4006	Notice of No Discharge
FRBP 7001	Scope of Rules of Part VII
LBR 2001-1	Notice to Creditors and Interested Parties
11 USC 727	Discharge

LBR 7041 - 1
October 15, 2002

Rule 7054 - 1

Costs - Taxation/Payment

(a) Cost Bill

A party allowed costs may, within ten (10) days after entry of judgment, file and serve on the attorney for the opposing party a bill of costs. The bill shall state the time that the costs thereon will be taxed, which time shall be no less than one (1) day from the date the bill is served on the opposing party. With the bill shall be filed a certification that the opposing party was served.

(b) Objection and Hearing

Before the costs are taxed, a party objecting to any cost contained in the bill shall file his objection in writing, specifying the ground of the objection. The Clerk will hear the objection.

(c) Taxation

After the hearing, or, if no objection is filed, on the date stated in the cost bill, the Clerk may enter an order taxing the costs. The taxation of costs made by the Clerk shall be final unless modified on appeal as provided in subparagraph (d).

(d) Appeal

A party may appeal the decision of the Clerk in the taxation of costs by filing a motion to re-tax with the Court within five (5) days of the taxation by the Clerk. The party appealing shall give notice and opportunity for a hearing to the opposing party. The motion will be heard upon the same papers and evidence used before the Clerk.

Related Provisions

FRBP 7054(b) Costs

LBR 7054 - 1
May 1, 1996

Rule 7055 - 1

Default - Failure To Prosecute

(a) Entry

Where a party to an adversary proceeding has appeared but is in default, the Clerk, may enter a default upon ten (10) days written notice to the party in default by the moving party. Any party so served may respond to the pleading or otherwise defend at any time before the presentment.

(b) Judgment

A party entitled to have the Clerk enter judgment pursuant to FRCP 55(b)(1) shall file an affidavit showing the principal amount due, which shall not exceed the amount demanded in the complaint, giving credit for any payments and showing the amounts and dates thereof, a computation of interest to the date of judgment, and costs and taxable disbursements claimed. The affidavit shall further state that:

- (1) The party against whom judgment is sought is not an infant or an incompetent person and is not protected by the Soldiers and Sailors Civil Relief Act;
- (2) A default has been entered by the Clerk; and
- (3) The disbursements sought to be taxed have been made in the action, or will necessarily be made or incurred. The Clerk shall thereupon enter judgment for the principal, interest, and costs pursuant to said rule.

(c) Dismissal For Want of Prosecution

In any adversary proceeding in which no action of record has been taken by the parties for the preceding six (6) months, the Clerk shall note the case for dismissal and shall give thirty (30) days notice to the counsel of record. If no action is taken nor an objection filed, an order of dismissal without prejudice may be entered by the Court.

Related Provisions

FRBP 7001	Adversary Proceedings
FRBP 7055	Default

LBR 7055-1
JUNE 1, 2007

Rule 7056 - 1

Summary Judgment

(a) Motion

Any party filing a motion for summary judgment shall set forth separately from the memorandum of law, and in full, the specific facts relied upon in support of the motion. The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to the specific portion of the record where the fact is found (i.e., affidavit, deposition, etc.). The specific portions of the record relied upon shall be attached to the statement of material facts.

(b) Status Conference

A telephone status conference shall be held as soon as practicable. The party filing the motion for summary judgment shall file and serve notice of the status conference upon the other party with the notice of motion for summary judgment. A date and time for the status conference should be requested via the Court's website. At the status conference the Court shall set the time for filing and serving the responsive memorandum prescribed in (c), the reply memorandum prescribed in (d), and the date and time for oral argument on the motion for summary judgment.

(c) Responsive Memorandum

Any party opposing a motion for summary judgment must file with its responsive memorandum a statement in the form prescribed in (a), setting forth the specific facts which the opposing party asserts establishes a genuine issue of material fact precluding summary judgment. Each fact must explicitly identify any fact(s) asserted by the moving party which the opposing party disputes or clarifies. (E.g.: "Defendant's fact #1: Contrary to plaintiff's fact #1, . . .") Following the fact and record citation, the opposing party may briefly describe any evidentiary reason the moving party's fact is disputed. (E.g.: "Defendant's supplemental objection to plaintiff's fact #1: hearsay.")

(d) Reply Memorandum

The moving party may file with its reply memorandum, if any, a statement in the form prescribed in (a), setting forth the specific facts which the moving party asserts establishes the absence of genuine material fact disputes. Each fact must explicitly identify any fact(s) asserted by the opposing party which the moving party disputes or clarifies, although the moving party need not repeat facts asserted in its initial statement of facts. (E.g.: "Plaintiff's fact #1: Contrary to defendant's fact #1, . . .") Following the fact and record citation, the moving party may briefly describe any evidentiary reason the opposing party's fact is disputed. (E.g.: "Plaintiff's supplemental objection to defendant's fact #1: Party admission exception to hearsay.")

(e) Assumptions by Court

In determining any motion for summary judgment, the Court may assume that the facts as claimed by the moving party are admitted to exist without controversy except as and to the extent that such facts are controverted by the record set forth in paragraph (c) above.

Related Provisions

FRBP 7056 Summary Judgment

LBR 7056-1
December 1, 2008